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23 Attorneys for Nominal Defendant  
 24 Leap Wireless International, Inc.

25 UNITED STATES DISTRICT COURT

26 SOUTHERN DISTRICT OF CALIFORNIA

27 CHARLES GRAHAM, Derivatively on Behalf  
 28 of Nominal Defendant LEAP WIRELESS  
 INTERNATIONAL, INC.,

29 Plaintiff,  
 30  
 31 v.  
 32  
 33 S. DOUGLAS HUTCHESON, AMIN  
 34 KHALIFA, GRANT BURTON, DEAN M.  
 35 LUVISA, MICHAEL B. TARGOFF, JOHN D.  
 36 HARKEY, JR., ROBERT V. LAPENTA,  
 37 MARK H. RACHESKY, M.D., and JAMES  
 38 D. DONDERO,

39 Defendants,  
 40  
 41 and  
 42 LEAP WIRELESS INTERNATIONAL, INC.,  
 43  
 44 Nominal Defendant.

45 CASE NO. 08-CV-0246 L NLS  
 46 (Derivative Action)

47 **DECLARATION OF KIMBERLY A.  
 48 HICKS IN SUPPORT OF NOMINAL  
 49 DEFENDANT LEAP WIRELESS  
 50 INTERNATIONAL, INC.'S MOTION  
 51 TO DISMISS DERIVATIVE  
 52 COMPLAINT**

53 Judge: The Hon. M. James Lorenz  
 54 Courtroom: 14  
 55 Hearing Date: August 4, 2008  
 56 Hearing Time: 10:30 a.m.

1 I, Kimberly A. Hicks, declare and state as follows:

2 1. I am an attorney at Latham & Watkins LLP, counsel for nominal  
 3 defendant Leap Wireless International, Inc. ("Leap"). I have personal knowledge of the facts  
 4 set forth herein and could and would testify competently thereto if called upon to do so.

5 2. Attached to the Request for Judicial Notice in Support of Nominal  
 6 Defendant Leap's Motion to Dismiss Derivative Complaint ("the Request") as Exhibit "A" is a  
 7 true and correct copy of Leap's Amended and Restated Certificate of Incorporation, dated  
 8 August 16, 2004, which is on file and publicly available with the Office of the Secretary of the  
 9 State of Delaware.

10 3. Attached to the Request as Exhibit "B" is a true and correct copy of  
 11 Exhibit 99.1 (Leap Press Release dated November 9, 2007) attached to Leap's Form 8-K, filed  
 12 with the Securities and Exchange Commission ("SEC") on November 13, 2007.

13 4. Attached to the Request as Exhibit "C" is a true and correct copy of  
 14 pertinent excerpts from the Statement of Financial Accounting Standards ("SFAS"), No. 154,  
 15 Accounting Changes and Error Corrections, published in 2008 by the Financial Accounting  
 16 Standards Board.

17 5. Attached to the Request as Exhibit "D" is a true and correct copy of  
 18 pertinent excerpts from Leap's Form 10-K/A for the fiscal year ended December 31, 2006, filed  
 19 with the SEC on December 26, 2007.

20 6. Attached to the Request as Exhibit "E" is a true and correct copy of  
 21 pertinent excerpts from Leap's Form 10-Q/A for the period ending June 30, 2007, filed with the  
 22 SEC on December 26, 2007.

23 7. Attached to the Request as Exhibits "F", "G" and "H" are true and correct  
 24 copies of Form 4s on file with the SEC, reporting Stewart D. Hutcheson's trading in Leap

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1 securities on February 27, 2007 and May 23, 2007, and Michael B. Targoff's trading in Leap  
2 securities on June 6, 2007.

3 I declare under penalty of perjury of the laws of the United States that the  
4 foregoing is true and correct. Executed this 30 day of May, 2008 in San Diego, California.

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6 *Kimberly A. Hicks*  
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Kimberly A. Hicks

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